

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

May 19, 2014

Jeff Citron
Diversified Land Management
75-5608 Hienaloli #32
Kailua-Kona, HI 96740

Dear Mr. Citron:

SUBJECT: Application: VARIANCE – VAR-14-000204
Applicant: JEFF CITRON/DIVERSIFIED MANAGEMENT
Owners: THOMAS L. AND ELIZABETH B. OLIVE
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, and Section 25-5-76 Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into the Front (South) Yard Setback.
TMK: 8-7-018:037; (Lot 215)

The Planning Director certifies the **approval** of VAR-14-000204, subject to variance conditions. The variance will allow the existing two-story single-family dwelling to remain on Lot 215 with a 14.1-foot to 14.6-foot front (south) yard setback in lieu of the minimum 15 foot front yard setback requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards, (2)(A), Section 25-5-77, Other regulations.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property consists of approximately 8,628 square feet of land and is located in the Kona Paradise Subdivision, at Kaohe 4th, South Kona, Hawai'i. The subject property's street address is 87-347 Kaohe Road.
- 2. County Zoning.** Agricultural – 5 acres (A-5a).
- 3. State Land Use.** Agricultural.
- 4. Setback Requirements:** 15 feet for front and rear; 8 feet sides.

- 5. Variance Application-Site Plan.** The applicant submitted the variance application, attachments, filing fee, and other submittals related to the variance application on March 19, 2014. The variance application's site plan map is drawn to scale and prepared by Thomas G. Pattison, L.P.L.S., (Pattison Land Surveying, Inc.), and denotes the portions of the existing single-family dwelling built into the front (south) yard setback .

The survey map shows that portions of the two-story single-family dwelling encroach 0.40 feet (4.8 inches) to 0.90 feet (10.8 inches) into the 15-foot front (south) yard setback.

- 6. County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2005-0216K) was issued on February 4, 2005, for the construction of a 3 bedroom and 2 bath single-family dwelling.

7. Agency Comments and Requirements:

- a. The State Department of Health (DOH) memorandum dated April 11, 2014. (See attached)
- b. The Department of Public Works – Building Division memorandum dated April 21, 2014. (See attached)

- 8. Public Notice.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on March 19, 2014 and April 4, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 11, 2014.

- 9. Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

GROUND FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

The variance application meets criteria (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the existing two-story single-family dwelling into the 15-foot front (south) yard setback as required by the Zoning Code.

The survey map prepared by Thomas G. Pattison, L.P.L.S., of Pattison Land Surveying, Inc., shows that portion of the single-family dwelling encroaches 0.40 feet (4.8 inches) to 0.90 feet (10.8 inches) into the front (south) yard setback.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the roof eave encroachment problems to occur. The error is miniscule although exceeding the code requirement.

It appears that the single-family dwelling constructed nearly 9 years ago was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, along with the unusual topography of the subject property special and unusual circumstances exist on the subject property which would interfere with highest and best use of the subject property.

Alternatives

(b) *There are no other reasonable alternatives that would resolve the difficulty.*

The variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to address the building encroachments constructed into the affected front yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the single-family dwelling constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design corrections of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. Further, due to the miniscule encroachment of the single-family residence, relocating the single-family dwelling and/or removing encroachment wouldn't be practical.

Because the encroachment is within the front yard setback, to consolidate the subject property with the existing roadway and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(c) *The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The variance application meets criterion (c) for the following reasons.

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

The encroachment of 0.40 feet (4.8 inches) to 0.90 feet (10.8 inches) into the front (south) yard setback is rather miniscule. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary lines.

The variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties. The single-family dwelling has been in existence for approximately 9 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is **approved** subject to the following conditions. Based on the variance application's survey map, the two-story single-family dwelling built upon the subject property ("LOT 215") will not meet the minimum front yard and rear yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of

Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or related to or connected with the granting of this variance.

3. The approval of this variance is only from the Zoning Code's minimum front yard setback and rear yard setback. The approval of this variance allows for the two-story single-family dwelling constructed on the subject property, pursuant to the variance application's site plan map.
4. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
5. This variance does not apply to the encroachment of the CRM wall onto the private roadway lot. This encroachment issue shall be dealt with between the owners of the roadway lot and the subject property owners.
6. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance 14-000204 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:rl

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xc: Kona Office
Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via email)

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII
2014 APR 14 PM 12:50



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: April 11, 2014
TO: Duane Kanuha
Planning Director, County of Hawaii
FROM: Newton Inouye ✉
District Environmental Health Program Chief
SUBJECT: Application: Variance-14-000204
Applicant: JEFF CITRON/DIVERSIFIED LAND MANAGEMENT
Owner: THOMAS L. AND ELIZABETH B. OLIVE
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (North) Yard
Setback and Rear (South) Yard Setback.
Tax Map Key: 8-7-018:037; Lot 215

Wastewater Branch does not concur with the application at this time. Wastewater Branch records indicate that the property Individual Wastewater System (IWS) does not have approval to use. Information within this application indicates the IWS (cesspool) may not meet the provisions of Hawaii Administrative Rule Chapter 11-62 regarding the setbacks from the property line. Please have your engineer submit a completed cesspool card information form identifying the location of your wastewater system and their relationship to existing property lines and buildings.

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Jeff Citron
Diversified Land Management
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May 19, 2014

William P. Kenoi
Mayor PLANNING DEPARTMENT
COUNTY OF HAWAII

Walter K. M. Lau
Managing Director
APR 21 PM 2:54



Warren H. W. Lee
Director

Brandon A. K. Gonzalez
Deputy Director

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www.co.hawaii.hi.us

April 21, 2014

From: Kelly Wilson
Non-Residential Plan Examiner
Building Division

Subject: Variance – VAR-14-000204
Applicant: Jeff Citron / diversified Land Management
Owner: Thomas L. and Elizabeth B. Olive
Request: Variance from Chapter 25, Zoning, article 5 Division 7, Section 25-5-76, Minimum Yards and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Front (North) Yard Setback and Rear (South) Yard Setback.
Tax Map Key: 8-7-018:037; Lot 215

In review of the submitted TMK, all Building, Plumbing and Mechanical Permits are complete for the existing structures. No issues at this time. Note any improvements may require permits depending on scope of work to be done.

Any questions please contact me at 808-961-8472 or kwilson@co.hawaii.hi.us.

Handwritten signature of Kelly Wilson in cursive.

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